

Jeffrey C. Misley, OSB No. 850674

jeffm@sussmanshank.com

Barry P. Caplan, OSB No. 650178

barry@sussmanshank.com

SUSSMAN SHANK LLP

1000 SW Broadway, Suite 1400

Portland, OR 97205-3089

Telephone: (503) 227-1111

Facsimile: (503) 248-0130

Attorneys for Receiver Myers & Co. Consultants LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF UNITED PIPE & SUPPLY
CO., INC.

Plaintiff,

v.

UNITED PIPE & SUPPLY CO., INC., an
Oregon Corporation

Defendant.

Case No. 3:12-cv-00694-HZ

**RECEIVER'S MOTION TO APPROVE
FINAL REPORT, TERMINATE
RECEIVERSHIP, DISCHARGE
RECEIVER AND EXONERATE BOND**

Myers & Co. Consultants LLC, court appointed Receiver of the above named defendant (the "Receiver"), hereby files this Motion to Approve Final Report, Terminate Receivership, Discharge Receiver and Exonerate Bond (the "Motion"). The Motion is based upon the statements herein; the supporting Declaration of Conrad Myers filed herewith, the records and files in this action, and such other and further supporting documents that may be presented in support of the Motion. As more fully set forth herein, the Receiver has substantially liquidated the real and personal property assets of the Defendant. The majority of funds in the Receivership Estate have been distributed to creditors as summarized below,

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and the Plan has been substantially consummated. In support of the Motion, the Receiver represents as follows:

1. **Appointment of Receiver.**

On April 19, 2012 an Order Appointing Receiver was entered by the Court appointing Myers & Co. Consultants LLC as Receiver in this case.

2. **Approval of Joint Distribution Plan of Receiver and the Committee.**

On February 25, 2013 the Court entered an Order Approving Joint Distribution Plan of the Receiver and the Committee (the "Plan") [Dkt. No. 160].¹ Among other things, the Plan classifies claims and interests into six classes and provides specific terms for the distribution of funds to creditors holding Allowed Claims. As of November 25, 2013, the Receiver has made distributions in the aggregate amount of \$3.89 million to Class 3 and Class 4 Unsecured Creditors as summarized below.

3. **Class 1—First Capital Western Region, LLC.**

The Allowed Claim of First Capital Western Region, LLC ("FCC") has been satisfied in full by payment to FCC from funds realized from the sale of liquidation of assets of the receivership. No further distribution will be made to FCC.

4. **Class 2—Other Secured Claims.**

Holders of Class 2 Secured Claims have been satisfied by either 1) payment of the Allowed Claim; 2) the surrender or sale of the collateral securing such Claims; or 3) separate agreement between the Receiver and the holder of the Secured Claim.

5. **Class 3—Unsecured Creditors.**

Class 3 consists of General Unsecured Creditors holding Allowed Claims in amounts greater than \$2,500. Each holder of an Allowed Class 3 Unsecured Claim is entitled to

¹ Capitalized terms not defined herein shall have the meaning set forth in the Plan.

receive its Pro Rata Share of any distribution made to Class 3 Creditors.

A. Initial Distribution. An initial distribution of 28.9721% of the amount of such holder's Allowed Class 3 Claim was made on or about January 31, 2013. A total of \$2.6 million was distributed to the holders of Allowed Class 3 Claims as part of the initial distribution.

B. Second Distribution. A second distribution totaling \$929,244 has been made to holders of Allowed Class 3 Claims. The combined initial and second distributions represent a 38.15% distribution to Class 3 Creditors.

C. Further Distributions. At the request of the Official Committee of Unsecured Creditors of United Pipe & Supply Co., Inc. (the "Committee"), all further distributions to Class 3 Claimants will be made by the Trustee of the UPS Liquidating Trust being formed for the benefit of Class 3 Creditors. The Committee has represented to the Receiver that the Trustee will make its first such interim distribution as soon as reasonably possible after the Receiver has transferred any remaining assets to the UPS Liquidating Trust. The Receiver estimates that following the Trustee's first interim distribution (estimated at \$650,000), a total of \$4.2 million will have been distributed to Class 3 Claimants, which represents a 45.4% distribution to creditors.

6. **Class 4—Convenience Claims.**

Class 4 consists of all Unsecured Creditors holding Allowed Claims in the amount of \$2,500 or less. Under the Plan, holders of Class 4 Claims are entitled to receive a single Cash payment in an amount estimated to be 70% of the amount of such holder's Allowed Claim.

On or about January 31, 2013 distribution checks were mailed to holders of Allowed Class 4 Claims. A total of \$283,627 has been distributed to the holders of Allowed Class 4

Claims which represents a 70% distribution. **No further distributions will be made to Class 4 creditors.**

7. **Class 5—United Pipe Equity Interests.**

Class 5 of the Plan consists of all Equity Interest Claims. **No distributions will be made to the holders of Class 5 Claims.**

8. **Class 6—Insider Claims.**

The Allowed Claims of Insiders, if any, will be subordinated in payment and priority to the Allowed Claims of Class 3 and Class 4 Unsecured Creditors. Holders of Insider Claims will not receive any payments pursuant to the Plan unless and until the Allowed Claims of Class 3 and Class 4 Creditors are paid in full.

9. **Administrative Claim Bar Date.**

The Plan required that any additional requests for payment of Administrative Claims must be filed and served upon the Receiver no later than thirty (30) days following the Plan Approval Date. No such claims were filed or received by the Receiver by the Administrative Claims Bar Date (March 28, 2013). Accordingly, under the Plan any holders of unfiled claims for Administrative Claims are now forever barred, estopped and enjoined from asserting such Administrative Claims against the Plan Debtor or the Receivership Estate.

10. **Resolution of Pending Litigation.**

The Receiver has resolved all pending litigation claims. To the best of the Receiver's knowledge, all other pending actions or litigation proceedings involving UPS have been settled, dismissed or otherwise resolved.

11. **Financial Reporting and Final Report.**

The Receiver has filed monthly financial reports throughout the receivership case detailing all cash receipts and disbursements made since the commencement of the case. The Receiver has also filed quarterly reports of receipts and disbursements with the Court as

required by the Plan. The Receiver filed its Notice of Receiver's Post Plan Approval Quarterly Statement of Receipts and Disbursements on September 17, 2013 [Dkt. No. 1358]. A copy of the Receiver's Final Report (the "Report") is attached hereto as Exhibit 1. As set forth in Exhibit 1, the Report provides a detailed breakdown of receipts and disbursements for the period of April 19, 2012 through November 25, 2013. The Report also provides cumulative financial information on all distributions made by the Receiver to creditors pursuant to the approved Plan.

The Receiver will file an amended final report that will show any activity following November 25, 2013, including the payment of final receivership administrative expenses and the transfer of funds to the UPS Liquidating Trust.

12. **Termination of Receivership.**

The Receiver has liquidated substantially all real and personal property in the Receivership Estate and distributed the majority of funds in the Receivership Estate to creditors. As such, the Distribution Plan has been substantially consummated. All administrative expenses and other costs of the Receivership have been paid to date. As noted below, the Receiver will make a final transfer of any remaining assets of United Pipe & Supply Co., Inc. ("United Pipe") to the UPS Liquidating Trust, including, but not limited to the books and records of United Pipe in its possession or under its control, as soon as practicable after the order is entered by this Court approving this Motion.

13. **Assignment of Remaining Assets and Transfer of Funds to Liquidating Trust.**

Pursuant to agreement between the Receiver and the Committee, any remaining receivership assets not yet fully administered including, but not limited to, all cash and cash equivalents, accounts receivable, Defendant's membership interest in "Six Corners, LLC," an Oregon LLC and the books and records of United Pipe in the Receiver's possession or under his control, will be transferred and assigned to the UPS Liquidating Trust formed for

the benefit of the holders of Class 3 General Unsecured Claims. The Trustee of the UPS Liquidating Trust will be charged with the responsibility of administering and liquidating the assets of the trust for the eventual benefit of the holders of Allowed Class 3 General Unsecured Claims.

14. **Notice.**

The Receiver proposes that notice of this motion be served on all creditors and interested parties receiving ECF notice, all Class 3 Unsecured Creditors, and those parties who have requested Special Notice, and that if no objections to the Motion are filed and received by Friday, December 13, 2013, the Receiver will submit a proposed order to the Court granting the relief requested herein.

WHEREFORE, Receiver requests that this Court enter an Order:

1. Approving the Receiver's final accounting, the Report attached hereto, and the financial reports filed in connection with this case; in accordance with the Plan and the relief requested herein;
2. Approving the payments made during the pendency of the receivership case and authorizing the Receiver to transfer to the UPS Liquidating Trust all remaining assets of the Receivership after payment of all expenses, including the Receivership administrative expenses;
3. Finding that the Receiver's acts, transactions and all of its actions, including the actions of its employees and agents, as Receiver herein for the Receivership period be ratified, confirmed and approved as being right and proper and in the best interest of the Receivership Estate and the parties to this action;
4. Discharging the Receiver, its officers, employees, agents, attorneys and representatives from all further duties, liabilities and responsibilities herein, other than those actions necessary to making any final distribution to creditors;

5. Authorizing the assignment and transfer of any additional assets not fully administered to the Liquidating Trust as requested herein; and

6. Exonerating the Receiver's bond.

DATED this 27th day of November, 2013.

Respectfully Submitted,

SUSSMAN SHANK LLP

By: /s/ Jeffrey C. Misley

Jeffrey C. Misley, OSB No. 85067

(503) 227-1111

Attorneys for Receiver Myers & Co. Consultants LLC

*21824-001\11/27) RECEIVER'S MOTION TO APPROVE FINAL REPORT, TERMINATE RECEIVERSHIP, DISCHARGE RECEIVER (01748555);4

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Myers & Co. Consultants, LLC

Receiver's Report of Cash Activity

For the Sep. 1 to Nov. 25, 2013 and

For the Period April 19, 2012 (Date of Appointment) through Nov. 25, 2013

Account / Description	Notes	June 1 Through November 25, 2013	Appointment (April 19, 2012) through November 25, 2013
Beginning Cash Balances			
September 1, 2013 and November 25, 2012	1	309,250	589,814
Increases in Cash			
Asset Sales		0	8,659,518
Advances from First Capital Corporation (FCC)		0	5,493,255
Refunds to United Pipe from First Capital		0	1,932,913
Misc. Cash Sales & Collections		0	744,052
Collection of Accounts Receivable		21,241	11,042,535
Total Increases		21,241	27,872,274
Decreases in Cash			
Payrolls			
Payroll including taxes & ADP Fees		0	2,424,604
December 2012 Taxes paid January 2013		0	200,213
401(k) & FSA contribution		2,497	106,942
		2,497	2,731,760
Payments to First Capital Credit Line			
Collections to FCC Lockbox		0	14,507,957
Customer Refunds		0	1,913
		0	14,509,870
Operating Expenses			
Facility Rent		0	250,122
Payments to Vendors for Goods Received		0	1,874,603
Mincron Software Maintenance		0	30,356
Equipment Rent		0	25,482
Freight / Delivery Cost		0	243,360
Insurance		0	116,613
Telephone		0	120,250
State/Local Sales & Other Taxes		3,370	177,613
Outside Services	2	78,299	981,807
Utilities (Including Trash Removal)		0	121,607
Flex Spending Account Contributions		0	8,527
Merchant Fees for Credit Card Processing		0	20,442
Miscellaneous Other Overhead Expenses		1,404	512,822
		83,073	4,483,604
Receivership Expenses			
Receiver Bond		0	10,000
Receiver Fees		33,204	1,248,926
Receiver Counsel Fees		38,446	746,083
Professional Fees - Auctioneer		0	66,067
		71,650	2,071,077
Distributions to Claimants			
First Dist. Paid to Class 3 (Unsecured) Claimants	4	0	2,490,520
First Dist. Paid to Class 4 (Convenience) Claimants	4	0	284,983
First Dist. Reserve for Disputed Claims	4	0	2,261,210
Second Dist. Paid to Class 3 (Unsecured) Claimants	4	122,826	1,114,286
Second Dist. Reserve for Disputed Claims	4	0	248,213
Transfer from Disputed Claims Reserve	4	0	(1,783,881)
Total Distributions		122,826	4,615,332

Exhibit 1

1 of 2

Myers & Co. Consultants, LLC
 Receiver's Report of Cash Activity
 For the Sep. 1 to Nov. 25, 2013 and

For the Period April 19, 2012 (Date of Appointment) through Nov. 25, 2013

Account / Description	Notes	June 1 Through November 25, 2013	Appointment (April 19, 2012) through November 25, 2013
Total Decreases in Cash		280,046	28,411,643
Cash Ending Balance - November 25, 2013		50,445	50,445
First Capital Credit Line Activity	3		
No Activity		0	0
Ending Balance - November 25, 2013		0	0
Reserve for Disputed Claims			
Beginning Balance September 1, 2013	4	726,245	1,847,489
Addition to Reserve	4	325	662,962
Reduction for Resolved Claims	4	0	(1,783,881)
Ending Balance - November 25, 2013		726,570	726,570

Notes to Receiver Report

1 Cash Beginning Balance

Myers & Co., Consultants LLC was appointed receiver under case No. 3:12-CV-00694-HZ on April 19, 2012. Beginning cash reflects the book balances in five cash accounts in Wells Fargo Bank, N.A. as of the close of business on April 18, 2012 and as of the end of the previous report.

2 Outside Services

Outside services include payments to Blakeley & Blakeley (\$45K) Creditors Committee Counsel, Kenneth Davis (\$7.2K) for accounting services, to Scott Hookland (\$5.4K) for collection services, to Terry Dotson (\$20.1K) for management services, and other small service providers.

3 First Capital Corporation - Holdback

At the time of loan repayment, First Capital Corporation held back \$50K to cover future legal and administrative costs. During the months of August 2012 through February 2013, legal and administrative costs used this holdback with no balance remaining at 2/28/13.

4 Distributions to Creditors & Reserves

On January 31, 2013 the Receiver made the first distribution to creditors in the court approved amount of \$3.8MM to general unsecured (Class 3) and convenience (Class 4) claimants as specified in the Joint Distribution Plan of the Receiver and the Committee. During the period September 1, 2013 through November 25, 2013, \$122.8K was distributed to unsecured claimants. That amount consisted of \$125K in a settlement payment to Sensus less voided checks from prior distributions where the claimant can not be located in the amount of \$2,174.

On April 30, 2013, the second distribution to creditors was made for \$1MM with \$752K being distributed to creditors and \$248K added to the reserves for disputed claims. During the Quarter from March through May 2013, \$1.67MM was released from reserves as disputed claims were resolved. As of November 25, 2013, \$726K remains in the disputed claims reserve and the disputed claims resolution process continues. The account earned \$325 in interest for this quarter.